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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY, DOCKET NO.	CONFIRMATION NO.
10/723,817	11/25/2003	Steven E. Sadinsky	50833/TJD/G316	8001
23363 7590 01/16/2008 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER FERGUSON, MICHAEL P	
			ART UNIT 3679	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/723,817

Applicant(s)

SADINSKY, STEVEN E.

Examiner

MICHAEL P. FERGUSON

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's admitted prior art (specification page 1 line 28-page 2 line 7).

As to claim 18, Applicant's admitted prior art discloses a pole capable of use with a gate comprising:

a lower end;

an insert that is received within the lower end of the pole; and

a pin that is fixed attached to the insert, the pin having a diameter smaller than that of the pole and a cylindrical portion that protrudes from the lower end of the pole, the cylindrical portion terminating at a substantially flat bottom surface;

wherein the pin is adapted to be inserted into a drilled socket in a pool deck (specification page 1 line 28-page 2 line 7).

Examiner notes that the use of the claimed pole with a gate has only been recited as intended use within claim 18; no specific structural features have been positively claimed that define a gate or which limit the use of the pole to function only with a gate. Accordingly, such claim only requires a pole capable of use with a gate.

Art Unit: 3679

As to claim 19, Applicant's admitted prior art discloses a pole wherein the insert is made of plastic (specification page 1 line 28-page 2 line 7).

As to claim 20, Applicant's admitted prior art discloses a pole wherein the pin is made of metal (specification page 1 line 28-page 2 line 7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Palamarz (US 5,355,642).

As to claim 25, Applicant's admitted prior art fails to disclose a pole wherein the pin is fixedly attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **56** is fixedly attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pole disclosed by Applicant's admitted prior art wherein the pin is fixedly attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

Art Unit: 3679

5. Claims 1-8, 10-12 and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of Applicant's admitted prior art.

As to claims 1-3 and 8, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**;

a mesh screen **IF** tensioned between the poles having top and bottom bindings;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33**, a first horizontal brace **12** for spacing the upright support members and a length of mesh screen tensioned between the upright support members;

support means **21,22** capable of withstanding lateral tension forces of the screen for supporting and latching the gate, the support means comprising a first pole **21** on one side of the gate and a second pole **22** on another side of the gate;

hinges **H** secured to the support means on one side of the gate; and

a latch device **M** secured to the gate and to the support means on the opposite side of the gate;

wherein the poles (capable of including a pin) are adapted to be inserted into the pool deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive one pole (capable of receiving a pin);

wherein the support means includes on each side of the gate a pair of poles **21,22** (capable of receiving an insert and a pin), wherein the poles are inserted into the pool deck and wherein cross members are attached to both poles (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a fence and gate wherein the poles include an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; wherein the insert is made of plastic; wherein the pin is made of metal; and wherein the pins are inserted into the pool deck.

Applicant's admitted prior art teaches a fence wherein poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; wherein the pins are inserted into a pool deck; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein the poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

Examiner notes that Claim 1 does not positively recite that the first and second poles of the support means each comprises one of the plurality of poles including an insert and a pin, nor does claim 1 positively recite that the first and second poles are directly attached to the upright support members of the gate.

As to claim 4, Sadinsky et al. disclose a fence and gate wherein the support means **21,22** includes on each side of the gate **G** a pair of gate poles **21,22** inserted

into the pool deck with cross members **24,25** attached to both of the pair of gate poles (Figure 3).

As to claim 5, Sadinsky et al. disclose a fence and gate wherein the gate **G** includes a generally U-shaped frame opening upwardly with the first horizontal brace **13** secured to the lower ends of the upright support members **31,33** and a second horizontal brace **CB** secured to the upright support members on the pool side of the mesh screen **IF** at a height well below the top of the gate fabric (Figure 3).

As to claim 6, Applicant's admitted prior art does not disclose any structural or functional significance as to the particular plastic of the insert (specification page 1 line 29-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate where the insert is polyvinylchloride.

The Appellant is reminded that the selection of a known material based upon its suitability for the intended use, wherein no structural or functional significance as to the particular material of an element is disclosed, is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art to have an insert made of polyvinylchloride as Applicant's admitted prior art does not disclose any structural or functional significance as to the particular plastic of the insert, and as such practice is a design consideration within the skill of the art.

As to claim 7, Applicant's admitted prior art does not disclose any structural or functional significance as to the particular metal of the pin (specification page 1 line 29- page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate where the pin is stainless steel.

The Appellant is reminded that the selection of a known material based upon its suitability for the intended use, wherein no structural or functional significance as to the particular material of an element is disclosed, is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art to have a pin made of stainless steel as Applicant's admitted prior art does not disclose any structural or functional significance as to the particular metal of the pin, and as such practice is a design consideration within the skill of the art.

As to claims 10-12, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11**;

a first length of mesh screen **IF** tensioned between the poles defining the pool fence;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33** and a second length of mesh screen tensioned between the upright support members of the gate; and

support means **21,22** to which the first length of mesh screen is attached for supporting the fence and gate and latching the gate including a truss structure capable

Art Unit: 3679

of isolating the lateral tension forces of the first length of mesh screen on opposite sides of the gate, the support means comprising at least one pole **21,22** on each opposite side of the gate;

wherein the poles (capable of including a pin) are adapted to be inserted into the deck adjacent to the pool; and

wherein the pool deck has a plurality of sockets, each socket adapted to receive a pole (capable of receiving a pin; Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a fence and gate wherein the poles include an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole; wherein the inserts are made of plastic; and wherein the pins are made of metal.

Applicant's admitted prior art teaches a fence wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert, the pin protruding from the bottom of each pole; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

Examiner notes that Claim 10 does not positively recite that the at least one pole on each opposite side of the gate comprises one of the plurality of poles including an insert and a pin, nor does claim 10 positively recite that the at least one pole on each opposite side of the gate is directly attached to one of the upright support members of the gate.

As to claim 14, Sadinsky et al. disclose a method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles **11** interconnected by flexible mesh fencing **IF** comprising:

inserting the plurality of poles (capable of including a pin) into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension, the deck having drilled sockets adapted to receive the poles (capable of receiving a pin);

the first and last poles of the series of poles defining a gate opening;

the first and last poles each constituting a pair of gate poles interconnected to each other to define a support structure **21,22** capable of absorbing the tension of the flexible mesh fencing;

fabricating a gate **G** including a pair of side rails **31,33**, a cross rail **12** and flexible mesh tensioned between the side rails;

hinging the first of the pair of side rails of the gate to the first of the pair of gate poles; and

installing a latch **M** between the second of the pair of side rails of the gate and the last pole of the tensioned fence;

Art Unit: 3679

whereby the gate is free to open and close without interference by the tension of the mesh of the fencing (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a method wherein the poles including an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

Applicant's admitted prior art teaches a fence wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert, the pin protruding from the bottom of each pole; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Sadinsky et al. wherein the poles include a plastic insert that is contained within each pole and a metal pin that is attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

6. Claims 9, 13, 17 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. in view of Applicant's admitted prior art as applied to claims 1, 8, 10, and 14 above, and further in view of Palamarz.

As to claim 9, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky

et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **56** is attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 13, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **56** is attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 17, Applicant's admitted prior art discloses a pole wherein the pin is attached to the insert by a screw (specification page 1 line 29-page 2 line 7). Sadinsky

Art Unit: 3679

et al. in view of Applicant's admitted prior art fails to disclose a method wherein the pin is attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **56** is attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

As to claim 24, Applicant's admitted prior art discloses a pole wherein the pin is fixedly attached to the insert by a screw (specification page 1 line 28-page 2 line 7). Sadinsky et al. in view of Applicant's admitted prior art fails to disclose a fence and gate wherein the pin is fixedly attached to the insert by an adhesive.

Palamarz teaches a pole **58** wherein a pin **56** is fixedly attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. in view of Applicant's admitted prior art wherein the pin is fixedly attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

Response to Arguments

10. Applicant's arguments, in regards to claims 18-20 and 25, filed October 29, 2007, have been fully considered but they are not persuasive.

As to claims 1 and 10, Attorney argues that Applicant's admitted prior art teaches away from the use of inserts and pins within gate poles, as such was perceived to decrease stability of a gate. Attorney argues that:

Applicant's admitted prior art does not disclose a fence comprising a plurality of poles including an insert that is contained within each pole and a pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; and wherein the pins are inserted into the pool deck.

Examiner disagrees. As to claims 1 and 10, Applicant's admitted prior art teaches a fence wherein poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert, the pin protruding from the bottom of each pole; wherein the pins are inserted into a pool deck; the smaller diameter pins enabling one to use less noticeable, smaller diameter holes, capable of receiving the smaller diameter pins, in the pool decking; the smaller holes being less noticeable when the pool is used without the fence (specification page 1 line 28-page 2 line 7).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fence and gate disclosed by Sadinsky et al. wherein the poles include a plastic insert that is contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking.

Examiner notes that Claims 1 and 10 do not positively recite that the first and second poles of the support means each comprises one of the plurality of poles including an insert and a pin, nor do claims 1 and 10 positively recite that the first and second poles are directly attached to the upright support members of the gate. Furthermore, Applicant's admitted prior art teaches that the use of inserts and pins within pool deck fence poles is well known within the art, independent of whether or not the use of such inserts and pins to directly support gate uprights is perceived to provide adequate stability.

As to claim 18, Attorney argues that Applicant's admitted prior art teaches away from the use of inserts and pins within gate poles, as such was perceived to decrease stability of a gate. Attorney argues that:

Applicant's admitted prior does not disclose a *gate pole*.

Examiner disagrees. As to claim 18, Applicant's admitted prior art discloses a pole capable of use with a gate (specification page 1 line 28-page 2 line 7).

Examiner notes that the use of the claimed pole with a gate has only been recited as intended use within claim 18; no specific structural features have been positively claimed that define a gate or which limit the use of the pole to function only with a gate. Accordingly, such claim only requires a pole capable of use with a gate. Furthermore, Applicant's admitted prior art teaches that the use of inserts and pins within pool deck fence poles is well known within the art, independent of whether or not the use of such inserts and pins to directly support gate uprights is perceived to provide adequate stability.

As to claims 9, 13, 17, 24 and 25, Attorney argues that:

Palamarz does not teach a pole wherein *the pin is fixedly attached to the insert by an adhesive*.

Examiner disagrees. As to claims 9, 13, 17, 24 and 25, Palamarz teaches a pole **58** wherein a pin **56** is fixedly attached to the pole by an adhesive **61**; the adhesive both retaining the pin within the pole and acts together with the pin to reinforce the pole (Figure 3, column 5 lines 29-52). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pole disclosed by Applicant's admitted prior art wherein the pin is fixedly attached to the insert by an adhesive as taught by Palamarz in order to more securely retain the pin within the pole and to reinforce the pole.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3679

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600